



DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG-2014-0281]

RIN 1625-AA09

**Drawbridge Operation Regulation; Oceanport Creek,
Oceanport, NJ**

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to modify the operating schedule that governs the New Jersey Transit Rail Operations (NJTRO) Bridge across Oceanport Creek at mile 8.4, at Oceanport, New Jersey. The bridge owner submitted a request to allow the bridge to require a four hour advance notice for bridge openings year-round based upon infrequent requests to open the draw during past years. It is expected that this proposed change to the regulations will create efficiency in drawbridge operations while continuing to meet the reasonable needs of navigation.

DATES: Comments and related material must be received by the Coast Guard on or before **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: You may submit comments identified by docket number USCG-2014-0281 using any one of the following methods:

(1) Federal Rulemaking Portal:

<http://www.regulations.gov>.

(2) Fax: 202-493-2251.

(3) Mail or Delivery: Docket Management Facility (M-30), U.S. Department of Transportation, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE, Washington, DC, 20590-0001. Deliveries accepted between 9 a.m. and 5 p.m., Monday through Friday, except federal holidays. The telephone number is 202-366-9329.

See the "Public Participation and Request for Comments" portion of the **SUPPLEMENTARY INFORMATION** section below for instructions on submitting comments. To avoid duplication, please use only one of these three methods.

FOR FURTHER INFORMATION CONTACT: If you have questions on this proposed rule, call or e-mail Mr. Joe Arca, Project Officer, First Coast Guard District Bridge Program, telephone 212-668-7165, e-mail joe.m.arca@uscg.mil. If you have questions on viewing or submitting material to the docket, call Cheryl

Collins, Program Manager, Docket Operations, telephone
202-366-9826.

SUPPLEMENTARY INFORMATION:

Tables of Acronyms

CFR	Code of Federal Regulations
DHS	Department of Homeland Security
FR	<u>Federal Register</u>
NPRM	Notice of Proposed Rulemaking
§	Section Symbol
U.S.C.	United States Code

A. Public Participation and Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related materials. All comments received will be posted, without change to <http://www.regulations.gov> and will include any personal information you have provided.

1. Submitting comments

If you submit a comment, please include the docket number for this rulemaking (USCG-2014-0281), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online (<http://www.regulations.gov>), or by fax, mail or hand

delivery, but please use only one of these means. If you submit a comment online via <http://www.regulations.gov>, it will be considered received by the Coast Guard when you successfully transmit the comment. If you fax, hand delivery, or mail your comment, it will be considered as having been received by the Coast Guard when it is received at the Docket Management Facility. We recommend that you include your name and a mailing address, an e-mail address, or a phone number in the body of your document so that we can contact you if we have questions regarding your submission.

To submit your comment online, go to <http://www.regulations.gov>, type the docket number USCG-2014-0281 in the "SEARCH" box and click "SEARCH." Click on "Submit a Comment" on the line associated with this rulemaking. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period and may change the

rule based on your comments.

2. Viewing comments and documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, type the docket number (USCG-2014-0281) in the "SEARCH" box and click "SEARCH." Click on Open Docket Folder on the line associated with this rulemaking. You may also visit either the Docket Management Facility in Room W12-140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE, Washington, DC, 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. We have an agreement with the Department of Transportation to use the Docket Management Facility.

3. Privacy Act

Anyone can search the electronic form of comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review a Privacy Act notice regarding our public dockets in the January 17, 2008, issue of the Federal Register (73 FR 3316).

4. Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for one using one of the four methods specified under **ADDRESSES**. Please explain why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the Federal Register.

B. Basis and Purpose

The New Jersey Transit Rail Operations (NJTRO) Bridge across Oceanport Creek at mile 8.4, at Oceanport, New Jersey, has a vertical clearance of 4 feet at mean high water and 6 feet at mean low water. The drawbridge operation regulations are listed at 33 CFR 117.736.

The waterway users are seasonal recreational vessels.

The owner of the bridge, New Jersey Transit Rail Operations (NJTRO), submitted a request to the Coast Guard to change the drawbridge operating regulations that presently require the bridge to open on signal from May 15 through September 15, between 5 a.m. and 9 p.m.; except that, the draw need not open 6 a.m. to 7:45 a.m., and 5:30 p.m. to 7:30 p.m., on weekdays,

excluding all Federal holidays except for Martin Luther King Day. The draw must open on signal upon four hours notice from May 15 through September 15, between 9 p.m. and 5 a.m., and from September 16 through May 14; except that, the draw need not be opened from 6 a.m. to 7:45 a.m. and 5:30 p.m. to 7:30 p.m. on weekdays, excluding all Federal holidays except for Martin Luther King Day. Public vessels of the United States must be passed as soon as possible at anytime.

Under this proposed rule the bridge would open year-round on signal if at least a four-hour advance notice is given; except that, the draw need not open weekdays between 6 a.m. and 7:45 a.m. and between 5:30 p.m. and 7:30 p.m., excluding Federal holidays.

C. Discussion of Proposed Rule

The Coast Guard proposes to change the drawbridge operation regulations at 33 CFR 117.736 that would allow the NJTRO Bridge across Oceanport Creek at mile 8.4, to open on signal after at least a four hour advance notice is given. The existing rush hour weekday closed periods between 6 a.m. and 7:45 a.m. and between 5:30 p.m. and 7:30 p.m.; except Federal holidays would remain unchanged by this notice of proposed rulemaking.

There were only eight requests to open the NJTRO Bridge during the past three years. As a result of the infrequent number of requests to open the bridge the Coast Guard believes that allowing the bridge to require a four-hour advance notice for bridge openings is reasonable.

The need to keep the draw from opening weekdays during the commuter rail rush hour periods is still necessary and will remain unchanged by this rule.

The exclusion of Martin Luther King Day from the Federal holiday exclusion in the existing regulation will be changed. All Federal holidays will be exempt from the rush hour closure periods.

The requirement to open the bridge as soon as possible for public vessels of the United States will be removed from this rulemaking because it is now listed under 33 CFR 117.31, of this chapter.

D. Regulatory Analyses

We developed this proposed rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on these statutes or executive orders.

1. Regulatory Planning and Review

This proposed rule is not a "significant

regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of Order 12866, or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under those Orders. We believe that this rulemaking is not a significant regulatory action because the bridge will still open for all vessel traffic at all times provided the four-hour advance notice is given.

2. Impact on Small Entities

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601-612, as amended, requires federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small

entities.

This proposed rule would affect the following entities, some of which might be small entities: the owners or operators of vessels needing to transit through the bridge.

This action will not have a significant economic impact on a substantial number of small entities for the following reasons: The NJTRO Bridge will open on signal at all times provided at least a four-hour advance notice is given.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this proposed rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rulemaking would economically affect it.

3. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this proposed rule. If the rulemaking would affect your small business, organization, or governmental jurisdiction and you have questions

concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT**, above.

The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

4. Collection of Information

This proposed rule would call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520.).

5. Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this proposed rule under that Order and have determined that it does not have implications for federalism.

6. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the **"FOR FURTHER INFORMATION**

CONTACT" section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

7. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this proposed rule will not result in such an expenditure, we do discuss the effects of this rulemaking elsewhere in this preamble.

8. Taking of Private Property

This proposed rule would not cause a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

9. Civil Justice Reform

This proposed rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988,

Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

10. Protection of Children

We have analyzed this proposed rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This proposed rule is not an economically significant rulemaking and would not create an environmental risk to health or risk to safety that might disproportionately affect children.

11. Indian Tribal Governments

This proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

12. Energy Effects

This proposed rule is not a "significant energy action" under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use.

13. Technical Standards

This proposed rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

14. Environment

We have analyzed this proposed rule under Department of Homeland Security Management Directive 023-01, and Commandant Instruction M16475.1D which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321-4370f), and have made a preliminary determination that this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment. This proposed rule simply promulgates the operating regulations or procedures for drawbridges. This rulemaking is categorically excluded, under figure 2-1, paragraph (32)(e), of the Instruction.

Under figure 2-1, paragraph (32)(e), of the Instruction, an environmental analysis checklist and a categorical exclusion determination are not required for this proposed rule. We seek any comments or information that may lead to the discovery of significant environmental impact from the proposed

rule.

E. List of Subjects in 33 CFR Part 117

Bridges.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 33 CFR 1.05-1;
Department of Homeland Security Delegation No. 0170.1.

2. Revise 33 CFR 117.736 to read as follows:

§117.736 Oceanport Creek.

The draw of the New Jersey Transit Rail Operations (NJTRO) Bridge at mile 8.4, near Oceanport, shall open on signal provided at least a four-hour advance notice is given by calling the number posted at the bridge.

The draw need not open for the passage of vessel traffic Monday through Friday, except Federal Holidays, between 6 a.m. and 7:45 a.m. and between 5:30 p.m. and 7:30 p.m.

Dated: 17 April 2014.

V.B. Gifford, Jr.,
Captain, U.S. Coast Guard,
Acting Commander, First Coast Guard District.

BILLING CODE: 9110-04-P

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